United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

NO. 76-4100

United States Court of Appeals

FOR THE SECOND CIRCUIT

SZABO FOOD SERVICES, INC.,

Petitioner,

v.

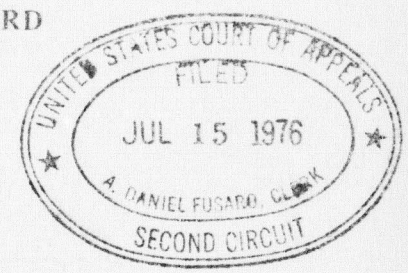
NATIONAL LABOR RELATIONS BOARD,

Respondent.

B
P/S

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD



JOHN S. IRVING,
General Counsel,
JOHN E. HIGGINS, JR.,
Deputy General Counsel,
CARL L. TAYLOR,
Associate General Counsel,
ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.

ALLISON W. BROWN, JR.,
GRANT E. MORRIS,
Attorneys,
National Labor Relations Board.
Washington, D.C. 20570

CASILLAS PRESS, INC.—1717 K Street, N.W.—Washington, D.C.—223-1220

INDEX

AUTHORITIES CITED

Page

Statute: Page

Miscellaneous:

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 76-4100

SZABO FOOD SERVICE, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE ISSUE PRESENTED

Whether the Board properly found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the certified representative of its employees in an appropriate bargaining unit.

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon petition of Szabo Food Services, Inc. ("the Company") to review a Decision and Order of the National Labor Relations Board issued on March 1, 1976, and reported at 222 NLRB No. 193 (A. 20-30).[1] The Board has cross-applied for enforcement of its order. This Court has jurisdiction of the proceeding under Section 10(e) and (f) of the Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151, *et seq.*), the unfair labor practice having occurred in Bridgeport and Stratford, Connecticut, within this judicial circuit (A. 27).

I. THE BOARD'S FINDING OF FACT

Briefly, the Board found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union[2] which was certified by the Board as the exclusive bargaining representative of a unit consisting of the Company's food service employees at three cafeterias operated by the Company in the plants of Sikorsky Aircraft, a division of United Aircraft Corporation. The relevant facts are as follows:

---

[1] "A." references are to the portions of the record reproduced as a joint appendix to the briefs. "Tr." refers to pages of the transcript in the underlying representation proceeding (Board Case No. 2-RC-16612) which is included as an exhibit to the appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

[2] Local 217, Hotel & Restaurant Employees and Bartenders Union, AFL-CIO.

A. The Representation Proceeding

1. The appropriate unit

The Company is an industrial food service contractor primarily engaged in the operation of cafeterias and food catering. The Company's central management is located in Chicago, Illinois; the headquarters for its United Aircraft District is located in East Hartford, Connecticut (A. 12). The Company's contract with United Aircraft calls for the operation of 19 cafeterias and a central kitchen at 10 separate locations in Connecticut. The Company has about 415 employees at these facilities (A. 11; Tr. 19).

Sikorsky Aircraft is a division of United Aircraft; there are two plants in the Sikorsky Division, one at Stratford and one at Bridgeport, Connecticut. These two plants are 5 miles apart; they are from 14 to 65 miles away from other facilities of United Aircraft. The Company operates three cafeterias at the two Sikorsky Division plants in which it employs about 50 persons. Although for purposes of accountability the Company's food service facilities are usually restricted to single plant locations, the Sikorsky Division plants comprise a single cost center or unit. Each Company unit is under a unit manager who is responsible to one of three area supervisors. The area supervisor for the Sikorsky plants also controls the Norwalk, Southington, and North Haven units (A. 12; Tr. 47).

The Company's food programs are uniformly administered in accordance with the contract between the Company and United Aircraft. The menus and prices are the same at every cafeteria. The unit managers purchase foodstuffs from a list approved by central management in Chicago (A. 12; Tr. 27).

The Company's district manager establishes the pay rates and terms and conditions of employment for employees in the United Aircraft District. The district manager determines the number of employees needed at each facility and makes the final decision in the resolution of grievances. Hiring of new employees is done by each unit manager. A unit manager also makes effective recommendations through the area supervisor and the district manager, regarding discharges, promotions, and pay increases for employees under him. In instances of gross misconduct, the unit manager may discharge an employee. The unit manager may also, with the approval of the area supervisor, issue written reprimands (A. 12-13; Tr. 24-25, 59).

During the year preceding the hearing herein, there were 700 temporary transfers of one day or less among the Company's various cafeterias. The temporary transfers represented less than one percent of the total man hours worked per year. They were mainly for monthly foremen's dinners and other events such as "family days," "fly-in," and "division president dinners." Approximately 16 percent of these temporary transfers affected the Sikorsky Division cafeterias (A. 13; Tr. 30-31).

2. The petition for an election; certification of the Union as majority representative

On September 11, 1974, the Union filed a representation petition with the Board, seeking certification as the collective-bargaining representative of the Company's food service employees at the Sikorsky Division plants. Following a hearing, the Board's Regional Director issued a Decision and Order on December 19, 1974, finding that the requested unit was inappropriate and dismissed the petition. The Union filed a Request for Review of the Regional Director's decision with the Board. On July 25, 1975, the Board, with former Member Kennedy dissenting, issued its

Decision on Review and Direction of Election, in which it reversed the Regional Director, found that the Sikorsky Division unit was appropriate for the purpose of collective bargaining, and directed that an election be held.[3]

On August 22, 1975, the Board conducted an election in which 46 of approximately 51 eligible voters in the designated unit cast their ballots, 41 of them for and 4 against, the Union. Five ballots were challenged, but were deemed not sufficient to affect the results of the election. On September 2, 1975, the Union was certified as the collective-bargaining representative of the employees in the Sikorsky unit.

B. The Unfair Labor Practice Proceeding

On September 26, 1975, the Union filed a charge with the Board alleging that the Company had refused to recognize or bargain collectively with the Union as the exclusive bargaining representative of its employees. A complaint thereafter issued alleging a violation by the Company of Section 8(a)(5) and (1) of the Act. The Company answered denying the commission of the unfair labor practices charged, and asserting that its refusal to bargain with the Union was justified on the basis of its objection to the Board's unit determination.

---

[3] The appropriate unit found by the Board is as follows (A. 28):

> All food service employees at [the Company's] food service operations in the Stratford and Bridgeport, Connecticut, plants of Sikorsky Aircraft, excluding office clerical employees, guards, and supervisors as defined in the Act.

II. THE BOARD'S CONCLUSIONS AND ORDER

Following proceedings, the Board issued its decision herein finding that the Company had violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union after it was certified as the bargaining agent in an appropriate unit.

The Board's order requires the Company to cease and desist from the unlawful conduct found, and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under the Act. Affirmatively, the order requires the Company to bargain collectively upon request with the Union as the certified representative of the employees in the unit found appropriate and to post customary notices.[4]

ARGUMENT

THE BOARD PROPERLY FOUND THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY REFUSING TO BARGAIN WITH THE UNION AS THE DULY CERTIFIED REPRESENTATIVE OF ITS EMPLOYEES IN AN APPROPRIATE UNIT.

The Company has admittedly refused to bargain with the Union on the asserted ground that the Board's certification of bargaining representative is invalid. Therefore, the issue is whether the Board, in determining the appropriate unit, acted within the broad discretion vested in it by Congress over representation matters. *N.L.R.B. v. Waterman S.S. Corp.*,

---

[4] In order to insure that the employees are accorded the services of their selected bargaining agent for the period provided by law, the Board construed the initial period of the Union's certification as beginning on the date the Company commences to bargain in good faith (A. 26). See *N.L.R.B. v. Commerce Co.*, 328 F.2d 600, 601 (C.A. 5, 1964), cert. denied, 379 U.S. 817; *N.L.R.B. v. Burnette Construction Co.*, 350 F.2d 57, 60 (C.A. 10, 1965).

309 U.S. 206, 226 (1940); *Packard Motor Car Co. v. N.L.R.B.*, 330 U.S. 485 (1947); *N.L.R.B. v. St. John's Associates, Inc.*, 392 F.2d 182 (C.A. 2, 1968). As we show below, the certification was in all respects valid and proper.

A. The Board properly determined that the Company's employees at the Sikorsky Division plants constitute an appropriate unit for bargaining.

1. Controlling principles

Section 9(b) of the Act provides that "the Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." As this Court stated in *Wheeler-Van Label Co. v. N.L.R.B.*, 408 F.2d 613, 616 (C.A. 2, 1969), cert. denied, 396 U.S. 834, quoted with approval in *MPC Restaurant Corp. v. N.L.R.B.*, 481 F.2d 75, 78 (C.A. 2, 1973):

> [A] Company undertakes a sizeable burden in arguing that the unit found was not an appropriate one; there can be no dispute that the Board has considerable leeway in exercising its judgment under Section 9(b) of the Act . . . as to the appropriateness of a given unit. A unit finding by the Board "involves a large measure of informed discretion." *Packard Motor Car Co. v. N.L.R.B., supra,* 330 U.S. 485 (1947), and were it is supported by substantial evidence, will not be reversed "in the absence of an 'arbitrary or capricious exercise of administrative discretion,' " *Empire State Sugar Co. v. N.L.R.B.*, 401 F.2d 559, 562 (C.A. 2, 1968).

Likewise, it is well-settled that in any given factual situation there may be more than a single way in which the employees may appropriately be grouped for purposes of collective bargaining. As this Court held in *MPC Restaurant Corp. v. N.L.R.B., supra,* 481 F.2d at 78: "The unit need not be the only appropriate unit nor even the most appropriate unit. It need only be *an* appropriate unit." (emphasis in original). See also, *Wheeler Van Label Co. v. N.L.R.B., supra,* 408 F.2d at 617. Hence, where the Board finds that the unit in question is an appropriate one, its finding is entitled to stand on review even though it might properly have found other units to be appropriate as well. *Banco Credito y Ahorro Ponceno v. N.L.R.B.,* 390 F.2d 110, 112 (C.A. 1, 1968), cert. denied, 393 U.S. 832.[5] Accord: *N.L.R.B. v. Bayliss Trucking Corp.,* 432 F.2d 1025, 1028 (C.A. 2, 1970); *Empire State Sugar Co. v. N.L.R.B.,* 401 F.2d 559, 562 (C.A. 2, 1968).

Finally, a unit limited to one or more of several similar facilities operated by a single employee is analogous to the "plant unit" specifically mentioned in the Act, and such a unit will ordinarily be found appropriate unless for some reason the employees do not constitute a distinct, homogenous group. In making this determination, the "key question" is whether the "employees have a sufficient community of interest to be an appropriate unit." *Wheeler-Van Label Co. v. N.L.R.B., supra,* 408 F.2d at 617. The Board also looks to such factors as the autonomy of the local manager, the geographical separation of the facility from other similar installations, the employer's administrative structure, the degree of temporary interchange of employees among the facilities, and whether

---

[5] The First Circuit in *Banco* held that the employer "at this appellate stage, faces a most difficult task. It cannot succeed only by demonstrating that [another] unit would be appropriate but must also show that [the] unit [designated by the Board] is clearly not appropriate." 390 F.2d at 112.

a union seeks to represent the employees in a larger unit. *Continental Insurance Co. v. N.L.R.B.*, 409 F.2d at 727, 729 (C.A. 2, 1969), cert. denied, 396 U.S. 902; *Banco Credito y Ahorro Ponceno v. N.L.R.B., supra,* 390 F.2d at 112. And, as the Board noted in its Sixteenth Annual Report, p. 98 (1951), "[r]arely, if ever, is a unit determined by any one of [several] factors standing alone. In most cases, several . . . factors are present; some pointing to the appropriateness of [an overall] unit, others pointing to the appropriateness of a narrow unit. In each case, the Board must weigh all the factors present to decide which way the balance falls."

2. The Board's unit determination was neither arbitrary nor capricious

Applying the above principles, the Board was plainly justified in finding that the employees at the three Sikorsky Division cafeterias "have a community of interest separate and distinct from the broader one that they share with other district employees . . ." (A. 13). The evidence set out *supra,* pp. 3-4, amply supports this finding. Thus, the Sikorsky unit manager exercises a substantial degree of autonomy. Personnel actions such as the hiring of replacements within the personnel complement alloted to a unit and the discharging of employees in cases of gross misconduct are exclusively within the scope of the unit manager's authority. The unit manager also initiates and effectively recommends through the area supervisor to the district manager, such management decisions as discharges, promotions and pay increases. The unit managers also has the authority to issue written reprimands with the approval of the area supervisor.[6]

---

[6] As noted by the Board, the record evidence did not reveal the specific duties and responsibilities of area supervisors. Thus, on the basis of the evidence presented, the Board surmised "that [area supervisors] act as liasons between headquarters and the units . . ." (A. 12 n. 3).

For purposes of accountability, the three cafeterias in the Sikorsky Division are combined by the Company as a single unit or cost center and, as a result, its employees are under the common supervision of a unit manager. At each cost center, the unit manager keeps records and is responsible for the performance of his unit (Tr. 47). The Board has repeatedly placed heavy reliance upon the extent of an employer's administrative decisions. See, *e.g., Drug Fair-Community Drug Co.*, 180 NLRB 525, 527-528 (1969); *Jewel Food Stores,* 111 NLRB 1368, 1371-1372 (1955). Indeed, the practical necessities of collective bargaining encourage having the bargaining unit accord to the administrative division. Correspondingly, when a company's organizational framework emphasizes decentralized administrative subdivisions, then these subdivisions should comprise the appropriate bargaining unit.

Another factor properly noted by the Board is the physical distance between the three plants in the Sikorsky Division and other United Aircraft locations. The Sikorsky plants are 5 miles apart and from 14 to 65 miles away from other facilities of United Aircraft. The Board, with court approval, has consistently stressed the importance of geographical separation in unit finding since it tends to create a separate and distinct community of interest among the employees in question. See, *e.g., N.L.R.B. v. Lou De Young's Market Basket, Inc.*, 406 F.2d 17, 24 (C.A. 6, 1969), remanded on other grounds, 395 U.S. 828; (22 miles between employer's two stores); *N.L.R.B. v. Kostel Corp.*, 440 F.2d 347, 349 (C.A. 7, 1971) (50-mile separation of the store-unit from closest other stores); *Banco Credito y Ahorro Ponceno v. N.L.R.B., supra,* 390 F.2d at 112 (40 miles from bank branch to main office and 16 miles to the nearest other branch); *N.L.R.B. v. Local 404, Teamsters,* 205 F.2d 99, 102-103 (C.A. 1, 1953) (13 miles between two plants).

The Board also noted that temporary interchange of Company employees involves for the most part special functions and does not occur on a regular or frequent basis. Thus, the record reveals that temporary transfers amounted to less than one percent of the man hours worked in the Company's various cafeterias on a district-wide basis over a one-year period prior to the instant litigation. Only 64 of the 700 temporary transfers affected the Sikorsky unit. Furthermore, the interchange of hourly employees generally involved special functions and did not occur regularly. These special functions include such events as foremen's dinners, "family days," "fly-ins," and "division president dinners" (A. 13). The temporary transfers, therefore, usually fell outside of the Company's normal function of supplying food catering services for employees of United Aircraft during their work shifts.[7]

---

[7] Assuming *arguendo* that this court should find that the employee interchange which took place was substantial, it does not follow that the larger district-wide unit would be the only appropriate unit. In the legislative history of the 1947 amendment to the National Labor Relations Act, Senator Taft, in response to criticism of Section 9(c)(5), stated (Staff of Senate Comm. on Labor and Public Welfare, 93d Cong. 2d Sess., Leg. Hist. of Labor Mgmt. Act 1947, at 1625; 2 Legislative History of Labor Management Relations Act, 1947, p. 1625 (Gov't Printing Office, 1948):

> Opponents of the bill have stated that it prevents the establishment of small operational units and effectively prevents organization of . . . businesses whose operations are widespread. It is sufficient answer to say that the Board has evolved numerous tests to determine appropriate units, such as community of interest of employees involved, extent of common supervision, interchange of employees geographical considerations, etc., *any one of which may justify the finding of a small unit.* (emphasis added).

Thus, employee interchange is merely one of several factors which the Board considers in making a unit determination. See *supra*, pp. 8-9.

Finally, the Board properly noted that there is no labor organization seeking a unit broader in scope than the Sikorsky Division unit; nor is there any history of bargaining for employees on a district-wide basis. Thus, there is no possible potential disruption of existing units, or of inter-union rivalry. As a result, this factor, together with the other factors set out above, support the Board's finding concerning the distinctive characteristics of the Sikorsky unit employees and warrant placing them in a grouping separate from the other units.

3. The Company's contentions are without merit

The Company raises several contentions which it asserts demonstrate that the Board's unit determination was arbitrary. None of these contentions are meritorious. First, the Company (Br. 9, 17) citing *N.L.R.B. v. Solis Theatres,* 403 F.2d 381 (C.A. 2, 1968), asserts that a district-wide unit is the smallest unit in which the Board could properly prescribe bargaining due to its centalized labor policy. A similar argument was rejected in *Continental Insurance Co. v. N.L.R.B., supra,* 409 F.2d 729, where this Court held that "the Company's reliance on *Solis Theatres* is misplaced, for its interpretation of that decision would permit any employer to impede unionization by centralizing final decisions on labor policies." Also see, *N.L.R.B. v. Burroughs Corp.,* 261 F.2d 463, 465-466 (C.A. 2, 1958), where the Court held that the employer's administrative arrangement, which featured centralized labor policies and company-wide uniformity of wages and working conditions, did not prevent the Board from establishing a smaller bargaining unit. Accord: *Metropolitan Life Ins. Co. v. N.L.R.B.,* 328 F.2d 820, 828 (C.A. 3, 1964), where all company agents were subject to the same wage policies, employee benefits and working conditions, but the Court held that the individual district office under its manager was a separate entity through which the employer conducted its

business and constituted an appropriate unit; *N.L.R.B. v. Western and Southern Life Ins. Co.*, 391 F.2d 119, 123 (C.A. 3, 1968), cert. denied, 393 U.S. 978. ("The fact that most elements of the Company's labor policy are controlled by the home office does not detract from [selecting a smaller unit]".)

N.L.R.B. v. Solis Theatres, supra, is also factually distinguishable from the ~~one~~ case at bar. There the Board found appropriate a unit of doormen, ushers, cashiers and matrons at the Freeman Theatre, one of the employers' 15 theatres located in and around New York City. This Court, in finding the Board's action to be arbitrary, held that the designated unit was not appropriate because, *inter alia,* it was not geographically separated and there were other Company employees organized on a circuit-wide basis. Here, in contrast, there is substantial geographic separation between the Sikorsky plants and the Company's other facilities, and there is no prior history of bargaining either in the Sikorsky unit or for other employees on a wider basis.

Gray Drug Stores, Inc., 197 NLRB 924 (1972) and *Twenty-First Century Restaurant,* 192 NLRB 881 (1971), cited by the Company (Br. 12-13), are likewise inapposite for in those cases the district managers played a singificant role in local day-to-day operations which obviously restricted the autonomy of local managers. In addition, there was a close geographic proximity between the designated units and other company locations. The Company's reliance (Br. 16-17) on *N.L.R.B. v. Pinkerton's Ins.*, 428 F.2d 479 (C.A. 6, 1970) is also misplaced, since that case is readily distinguishable. There, the Board found that a unit consisting of guards employed in Mansfield, Ohio, was appropriate, rejecting the employer's contention that the smallest appropriate unit consisted of the guards employed in the Columbus district. The Court refused to enforce the Board's finding, noting the following factors: the Board's decision

was an unexplained departure from previous decision holding that Pinkerton's district offices were appropriate units; the Columbus district was administratively structured to, and did, exercise close supervision over all guards employed in the district including the Mansfield guards; only minor supervisors (field lieutenants) were located in the Mansfield area and their primary functions were limited to inspections and scheduling guards' work; Pinkerton's business was quite dissimilar to chain operations or district offices of ordinary industrial enterprises, since its business at any location could suddenly be terminated by the client – an event that likely would occur if there were a strike; and only insignificant geographic separations existed among the areas within the Columbus district, without any corresponding division of substantial ministerial responsibilities. None of these factors is present in the instant case.

Other cases cited by the Company are also factually distinguishable from the one at bar. Thus, in *N.L.R.B. v. Purity Food Stores, Inc.*, 376 F.2d 497 (C.A. 1, 1967), cert. denied, 389 U.S. 959, the Court, in disapproving a single store unit, characterized the chain of service food stores as a "small, compact, homogeneous, centralized and integrated operation." Moreover, the holding in *Purity Food Stores* was later circumscribed in *Banco Credito y Ahorro Ponceno v. N.L.R.B., supra,* 390 F.2d at 112, in which the court held that "[o]ur decision in *[Purity Food Stores]* does not stand for the proposition that central policy-making in a chain precludes a single unit determination." Similarly, in *N.L.R.B. v. Frisch's Big Boy Ill-Mar, Inc.*, 356 F.2d 895, 897 (C.A. 7, 1966), the court rejected a unit restricted to one of ten restaurants in the same city. The Court there stressed the fact that three supervisors whose authority included personnel relations divided their entire time among the ten restaurants, and that "the decisions left to the managers do not involve any significant element of judgment as to employment relations." Further,

as observed by this Court in *Continental Insurance Co. v. N.L.R.B., supra,* 409 F.2d at 729, "in *Frisch's Big Boy,* . . . the court implied that geographic isolation could justify a separate unit, even though the unit manager did not have the power to decide matters which are customarily the subjects of collective bargaining."

The Company's contention (Br. 23-24) that the Board's unit determination is invalid because, contrary to Section 9(c)(5) of the Act, controlling weight was given to the Union's extent of organization is also without merit.[8] It is well-settled that Section 9(c)(5) "was not intended to prohibit the Board from considering the extent of organization as one factor, though not the controlling factor, in its unit determination." *N.L.R.B. v. Metropolitan Life Ins. Co.,* 380 U.S. 438, 442 (1965). Here, it is plain that the Board did not rely solely on the extent of organization but instead found the Sikorsky unit appropriate based on a number of factors. Nor is it significant that the Sikorsky unit employees is coextensive with the jurisdiction and organizational drive of the Union. Section 9(c)(5) is a limitation on the Board, not the Union. So long as the Board in its decision does not give controlling weight to the Union's extent of organization, it is immaterial that such a consideration may have guided or even wholly influenced the Union in its organization efforts. As this Court stated in *MPC Restaurant Corp. v. N.L.R.B., supra,* 481 F.2d at 78 n. 1, in rejecting the identical argument, "[t]he Act does not forbid *consideration* of extent of organization and there is no indication that the Board's finding was based wholly or even principally on the event of union organization." (original emphasis).

---

[8] Section 9(c)(5) provides that "in determining whether a unit is appropriate for the purpose specified in subsection (b), the extent to which the employees have organized shall not be controlling."

The Company also asserts (Br. 22-23) that the Board was incorrect in using geographic separation as a factor to support its unit determination. However, as previously noted, *supra*, p. 10, it is well settled that geographical location can serve a useful and necessary role in the determination of an appropriate bargaining unit. Since there is no mathematical formula for determining geographical integration and separation, the appropriatness of this factor depends upon its application. Here, as the Board stated, "the Sikorsky plants are but 5 miles apart and the closest cafeteria is 14 miles away" (A. 14), and "over half of the employees in the [Company's] proposed unit are located more than 50 miles away from [the Union's] proposed unit" (A. 14 n. 4). Thus, under these circumstances the Board correctly considered geographic separation as a factor to be weighed in its unit determination and, due to the geographical separation of the Sikorsky unit from other Company installations, properly found that this factor supported its unit determination.

Finally, the Company argues (Br. 15-17) in favor of district-wide bargaining on the basis of administrative convenience. Such a plea of convenience was rejected in *N.L.R.B. v. Western & Southern Life Insurance Co.*, 391 F.2d 119, 123 (C.A. 3, 1968) where the Court noted that the choice of the smaller of several possible units, since it enlarges "the importance of the individual employee and his vote," accords with the Board's statutory duty to choose units which "assure to employees the fullest freedom in exercising the right guaranteed by this Act." The Court held that the Board "was entitled to give this interest [the employees' interest in a smaller unit] greater weight than that accorded to the employer's interest in bargaining with the largest, and presumably most convenient possible unit." The Court also observed that "[t]he fact that most elements of the Company's labor policy are controlled by the home office does not detract from this conclusion. . . ." *Id.* at 123.

In sum, the Board and the courts have recognized that it is not unusual for there to be more than one appropriate unit and, therefore, the Board may choose from among several appropriate units. Indeed, here the Board agreed with the Company's contention that the district-wide unit would be appropriate (A. 13). However, the fact that a large unit might also be appropriate does not affect the validity of the Board's determination that the smaller Sikorsky District unit is also appropriate for purposes of collective-bargaining.

CONCLUSION

For the reasons stated, we request that a judgment be entered denying the petition for review and enforcing the Board's order in full.

ALLISON W. BROWN, JR.,
GRANT E. MORRIS,
Attorneys,
National Labor Relations Board.
Washington, D.C. 20570

JOHN S. IRVING,
General Counsel,
JOHN E. HIGGINS, JR.,
Deputy General Counsel,
CARL L. TAYLOR,
Associate General Counsel,
ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.

July, 1976.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SZABO FOOD SERVICES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 76-4100
	)	
NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the Board's offset printed brief in the above-captioned case have this day been served by first class mail upon the following counsel at the address listed below:

Joseph C. Wells, Esq.
1150 Connecticut Ave., N.W.
Suite 900
Washington, D. C. 20036

/s/ Elliott Moore
Elliott Moore
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.
this 14th day of July, 1976.